

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RALPH LEON PYE,

Defendant-Appellant.

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UNPUBLISHED

April 15, 1997

No. 184402

Ingham Circuit Court

LC No. 94-067890-FH

Before: Reilly, P.J., and Wahls and N.O. Holowka\*, JJ.

PER CURIAM.

Defendant appeals as of right his conviction of felonious assault, MCL 750.82; MSA 28.277 and his sentence of three to fifteen years in prison as an habitual offender, fourth offense, MCL 769.12; MSA 28.1084. We reverse defendant's convictions and remand for a new trial.

Defendant crashed his car into the complainant's truck in the parking lot of a shopping plaza as the complainant stood next to the truck; the force of the impact knocked the truck into the complainant, who then fell to the ground.

Defendant contends that he was denied a fair trial when the trial court improperly sustained several objections by the prosecution during defendant's testimony. Defendant argues that the actions of the trial court unfairly undermined defendant's credibility and substantially impaired his efforts to give his account of the incident and the events precipitating it. We agree.

Defendant testified in his own defense at trial, during which he attempted to present his version of the incident in question, including his contention that his crash into the complainant's truck was unintentional, as well as his belief that the complainant had a gun and intended to harm defendant at the time in question. We note that felonious assault is a crime for which the prosecution must prove that defendant intended to assault his complainant. *People v Malkowski*, 198 Mich App 610, 614; 499

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\* Circuit judge, sitting on the Court of Appeals by assignment.

NW2d 450 (1993). As such, defendant's testimony regarding his intent was critical to his ability to present a defense.

Throughout defendant's testimony, the trial court sustained nearly all of several objections made by the prosecution, many times erroneously. The most egregious examples of error occurred when defendant tried to explain his belief with regard to the events in question. For example, on direct examination, defendant attempted to explain how he lost control of his car, stating that he "ducked down because I thought [the complainant] was coming with a gun." The prosecution objected:

[Prosecutor]: Objection as to what he thought.

*The Court:* What he thought, we are not interested in what he thought. He may testify what he saw, what he heard, what he smelled, things of that sort. But what he thought . . . .

This was prejudicial error. The trial court's statement essentially informed the jury not to consider defendant's state of mind at the time of the incident, when such was in fact central to defendant's case, as we have noted. Similarly, at one point on redirect examination, defendant again stated that "I had been told that [the complainant] carried a gun." Again, the prosecution objected:

[Prosecutor]: Objection as to the hearsay.

*The Court:* I'll sustain the objection of what he had been told.

Here, defendant's statement regarding what he had been told was not hearsay, i.e., it was not offered as proof of the matter asserted (i.e., that the complainant in fact carried a gun), MRE 801(c), but rather as proof of defendant's *belief* that the complainant had a gun. Again, such evidence of defendant's state of mind was central to the defense, and should not have been precluded.

Moreover, the prosecution has raised for our consideration an issue not addressed by defendant, specifically, whether the court erred in failing to instruct the jury on the defense of accident, CJI 2d 7.3a. Recognizing that defense counsel did not request the instruction and did not object to the instructions given, the prosecution notes this Court grants relief only in cases of manifest injustice, *People v VanDorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993), and that a miscarriage of justice occurs when an erroneous or omitted instruction pertains to a basic and controlling issue in the case. *People v Perry*, 218 Mich App 520, 530; 554 NW2d 362 (1996). The prosecution admits that "[t]he entire thrust of the defense presented in defendant's testimony was that he lost control of his car as a result of being fearful of the victim."

Considered separately, each of these issues presents a close case. The combined effect, we conclude requires a reversal of the convictions. The court's rulings and statements to the effect that what defendant thought was irrelevant were inconsistent with the court's instructions that intent was a necessary element of felonious assault. The matter would have been clarified if the court had instructed on the defense of accident. Whether the act was intentional or accidental was the central issue in the

case, and yet, the court's instructions did not direct the jury's attention to this issue. *People v Ora Jones*, 395 Mich 379, 394; 236 NW2d 461 (1975).

Given that defendant's testimony was critical to his defense and that the defense of accident was central to the case, we are convinced that defendant was deprived of a fair trial, and we reverse defendant's convictions and remand for a new trial. We therefore need not address defendant's remaining contentions.

Reversed and remanded for a new trial. We do not retain jurisdiction.

/s/ Maureen Pulte Reilly

/s/ Myron H. Wahls

/s/ Nick O. Holowka